

# PATENT COOPERATION TREATY

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Docket: 203086008  
 Invent: Orlyx  
 Attorney: JES

PCT

From the  
 INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:  
 DANIEL HART  
 KNOBBE, MARTENS, OLSON & BEAR, LLP  
 14TH FLOOR, 2040 MAIN STREET  
 IRVINE, CA 92614

## WRITTEN OPINION

(PCT Rule 66)

Date of Mailing (day/month/year) <span style="float: right; font-size: 1.2em;">02 NOV 2004</span>	
Applicant's or agent's file reference  ORYXENG.009Q	REPLY DUE within 1 months/days from the above date of mailing
International application No. PCT/US03/18620	International filing date (day/month/year) 11 June 2003 (11.06.2003)
Priority date (day/month/year) 12 June 2002 (12.06.2002)	
International Patent Classification (IPC) or both national classification and IPC IPC(7): C10L 1/18, 1/22 and US Cl.: 44/307, 308, 324, 325	
Applicant JORDAN, FREDERICK L.	

1. This written opinion is the first (first, etc.) drawn by this International Preliminary Examining Authority.
2. This opinion contains indications relating to the following items:
  - I ☒ Basis of the opinion
  - II ☐ Priority
  - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
  - IV ☐ Lack of unity of invention
  - V ☒ Reasoned statement under Rule 66.2 (a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
  - VI ☐ Certain documents cited
  - VII ☐ Certain defects in the international application
  - VIII ☐ Certain observations on the international application

3. The applicant is hereby invited to reply to this opinion.

**When?** See the time limit indicated above. ~~The applicant may, before the expiration of that time limit, request this Authority to grant an extension. See rule 66.2(d).~~

**How?** By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

**Also** For an additional opportunity to submit amendments, see Rule 66.4.  
 For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis.  
 For an informal communication with the examiner, see Rule 66.6

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.

4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 12 October 2004 (12.10.2004)

Name and mailing address of the IPEA/US Mail Stop PCT, Attn: IPEA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450	Authorized officer Cephia D. Toomer Telephone No. 571-272-1700
Facsimile No. (703) 305-3230	

Form PCT/IPEA/408 (cover sheet)(July 1998)

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# WRITTEN OPINION

International application No.

PCT/US03/18620

## I. Basis of the opinion

### 1. With regard to the elements of the international application:\*

- ☒ the international application as originally filed
- ☒ the description:
  - pages 1-69, as originally filed
  - pages NONE, filed with the demand
  - pages NONE, filed with the letter of \_\_\_\_\_
- ☒ the claims:
  - pages 70-72, as originally filed
  - pages NONE, as amended (together with any statement) under Article 19
  - pages NONE, filed with the demand
  - pages NONE, filed with the letter of \_\_\_\_\_
- ☒ the drawings:
  - pages 1-23, as originally filed
  - pages NONE, filed with the demand
  - pages NONE, filed with the letter of \_\_\_\_\_
- ☐ the sequence listing part of the description:
  - pages NONE, as originally filed
  - pages NONE, filed with the demand
  - pages NONE, filed with the letter of \_\_\_\_\_

### 2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

- These elements were available or furnished to this Authority in the following language \_\_\_\_\_ which is:
- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
  - ☐ the language of publication of the international application (under Rule 48.3(b)).
  - ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

### 3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the written opinion was drawn on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

### 4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages NONE
- ☐ the claims, Nos. NONE
- ☐ the drawings, sheets/fig NONE

### 5. ☐ This opinion has been drawn as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed."

WRITTEN OPINION

International application No.  
PCT/US03/18620

**V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

**1. STATEMENT**

Novelty (N)	Claims <u>1-36</u>	YES
	Claims <u>NONE</u>	NO
Inventive Step (IS)	Claims <u>NONE</u>	YES
	Claims <u>1-36</u>	NO
Industrial Applicability (IA)	Claims <u>1-36</u>	YES
	Claims <u>NONE</u>	NO

**2. CITATIONS AND EXPLANATIONS**

Claims 1-36 lack an inventive step under PCT Article 33(3) as being obvious over Jordan (US 5,826,369).

Jordan teaches a chlorophyll based fuel additive for reducing pollutant emissions comprising trans beta-carotene, jojoba oil, chlorophyll and a solvent or diluent such as toluene. The additive may contain 2-ethylhexyl nitrate as a cetane improver. The fuel additive is suitable for use in diesel fuels and diesel engines to reduce pollutants. See abstract; col. 1, lines 66-67; col. 2, lines 1-28, 61-67; col. 3, lines 1-13; col. 4, lines 5-16; col. 5, lines 25-37.

Jordan teaches the limitations of the claims other than that the beta-carotene is a cetane improver. However, no unobviousness is seen in this difference because intended use is not an inventive step.

Claims 1-36 meet the criteria set out in PCT Article 33(2), because the prior art does not teach the fuel additive, fuel containing the additive and the method of using the additive.

Claims 1-36 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.

----- NEW CITATIONS -----

WRITTEN OPINION

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**Supplemental Box**

(To be used when the space in any of the preceding boxes is not sufficient)

**TIME LIMIT:**

The time limit set for response to a Written Opinion may not be extended. 37 CFR 1.484(d). Any response received after the expiration of the time limit set in the Written Opinion will not be considered in preparing the International Preliminary Examination Report.

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